

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)

JOHN DIN, M.D.)
2720 Capitol Avenue, #302)
Sacramento, CA 95816)

No. D-4973

Certificate No. A-18979)

Respondent.)

DECISION

The foregoing Stipulation, in case number D-4973, is hereby adopted by the Division of Medical Quality of the Medical Board of California as its decision in the above-entitled matter.

This Decision shall become effective on 9-7-93.

IT IS SO ORDERED 8-4-93.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA

By: Theresa L. Claassen
THERESA L. CLAASSEN
Secretary

1 DANIEL E. LUNGREN, Attorney General
 of the State of California
 2 JANA L. TUTON
 Supervising Deputy Attorney General
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 6
 Attorneys for Complainant
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8 BEFORE THE
 DIVISION OF MEDICAL QUALITY
 9 MEDICAL BOARD OF CALIFORNIA
 DEPARTMENT OF CONSUMER AFFAIRS
 10 STATE OF CALIFORNIA
 11

12 In the Matter of the)	No. D-4973
Accusation Against:)	
13)	STIPULATION, WAVIER AND
JOHN DIN, M.D.)	<u>DISMISSAL</u>
14 2720 Capitol Avenue, #302)	
Sacramento, CA 95816)	
15)	
Physician and Surgeon)	
16 Certificate No. A-18979)	
17)	
Respondent.)	
18)	

19
 20 IT IS HEREBY STIPULATED by and between John Din, M.D.,
 21 the respondent in this matter, with the advice of his attorney,
 22 Robert J. Sullivan, Esq., and Dixon Arnett, as Executive Officer
 23 of the Medical Board of California, Department of Consumer
 24 Affairs, by and through his attorney, Mara Faust, Deputy Attorney
 25 General, that the following matters are true:
 26 1. Accusation No. D-4973 is presently pending against
 27 John Din, M.D., (hereinafter referred to as the "respondent"),

1 Physician's and Surgeon's Certificate Number A-18979, before the
2 Medical Board of California (hereinafter referred to as the
3 "Board") and said Accusation having been filed on or about
4 October 1, 1992.

5 2. The complainant in said Accusation, Dixon Arnett,
6 is the Executive Officer of the Board and brought said Accusation
7 in his official capacity only.

8 3. Respondent has fully discussed with Robert J.
9 Sullivan Esq., the charges contained in the above-mentioned
10 Accusation, and in that connection, respondent has been fully
11 advised regarding his rights in this matter.

12 4. Respondent hereby freely and voluntarily waives his
13 right to a hearing on the charges and allegations contained in
14 the above-mentioned Accusation in order to enter into this
15 Stipulation and Waiver and that he further agrees to waive his
16 right to reconsideration, judicial review, and any and all rights
17 which may be accorded him by the Administrative Procedure Act and
18 the laws of the State of California, except his right to petition
19 for termination or modification of probation pursuant to
20 Government Code section 11522.

21 5. All admissions of fact and conclusions of law
22 contained in this Stipulation are made exclusively for this
23 proceeding and any future proceedings between the Board and the
24 respondent, but not otherwise, and shall not be deemed to be
25 admissions for any purpose in any other administrative, civil or
26 criminal action, forum or proceeding.

27 6. Respondent's license history and status as set

1 forth at paragraph 2 of the Accusation are true and correct and
2 respondent's address of record is as set forth in the caption of
3 this Stipulation and Waiver. (A copy of Accusation Number D-
4 4973 is attached hereto as Exhibit A).

5 7. For purposes of the settlement of the action
6 pending against respondent in case No. D-4973 and to avoid a
7 lengthy administrative hearing, respondent admits that there is a
8 factual and legal basis for the imposition of discipline pursuant
9 to some of the allegations of Accusation Number D-4973.

10 8. Respondent admits that as to the First, Third, and
11 Ninth Causes for Disciplinary Action in Accusation Number D-
12 4973, he has violated Business and Professions Code section
13 2234(b) in that while respondent performed a pelvic examination
14 on these four patients each patient perceived him to be massaging
15 her clitoris. Respondent admits that his conduct constitutes
16 gross negligence and he will cease and desist from such conduct
17 in the future.

18 9. The parties stipulate and agree that the Second,
19 Fourth, Sixth, Seventh, Eighth, and Eleventh Causes for
20 Discipline are hereby dismissed. The parties expressly stipulate
21 and agree that the matters alleged in said Seventh and Eighth
22 Causes for Discipline (paragraphs 16 through 18, inclusive) may
23 not be used or considered by the Board, or any panel thereof in
24 any future petition(s) for reduction in penalty of respondent's
25 license to practice medicine.

26 10. Concerning the allegations in the First and Fifth
27 Causes for Discipline, wherein respondent is accused of kissing a

1 patient on the mouth and fondling and/or hugging a second
2 patient, respondent denies these allegations but admits that
3 complainant had reasonable cause for filing these allegations in
4 the Accusation.

5 11. It is understood by all parties hereto that by
6 virtue of the foregoing recitals are solely for purposes of
7 settlement of Accusation Number D-4973.

8 IT IS HEREBY STIPULATED AND AGREED that the Medical
9 Board of California, upon its approval of the Stipulation, Waiver
10 and Dismissal herein set forth, may without further notice,
11 prepare a decision and enter the following order, whereby
12 Physician and Surgeon Certificate No. A-18979 heretofore issued
13 to respondent by the Medical Board of California, is hereby
14 revoked, PROVIDED HOWEVER, that execution of this order of
15 revocation is stayed, and respondent is placed on probation for a
16 period of seven (7) years, upon the following terms and
17 conditions:

18 (A) ACTUAL SUSPENSION

19 As part of probation, Physician and Surgeon Certificate
20 Number A-18979 issued to respondent John Din, M.D. is suspended
21 for sixty (60) consecutive days beginning and ending within eight
22 (8) months of the effective date of this decision. Respondent
23 shall provide the Division with written notice of the dates of
24 his suspension at least 2 weeks prior to commencing the
25 suspension.

26 (B) EDUCATION COURSE

27 Within 90 days of the effective date of this decision,

1 and on an annual basis thereafter, respondent shall submit to the
2 Division for its prior approval an education program or course to
3 be designated by the Division, but which shall include at least
4 one course in the first year only on how to properly conduct a
5 pelvic examination. The continuing medical education shall not
6 be less than 40 hours per year, for the first three years of
7 probation. This program shall be in addition to the continuing
8 medical education requirements for re-licensure. Following the
9 completion of each course, the Division or its designee may
10 administer an examination to test respondent's knowledge of the
11 course. Respondent shall provide proof of attendance for 65
12 hours of continuing medical education of which 40 hours were in
13 satisfaction of this condition and were approved in advance by
14 the Division.

15 (C) THIRD PARTY PRESENCE

16 During probation, respondent shall have a third party
17 present while examining or treating female patients.

18 (D) ORAL OR WRITTEN EXAM

19 Within 60 days of the effective date of this decision,
20 respondent shall take and pass an oral or written exam on how to
21 properly conduct a pelvic examination. If respondent fails this
22 examination, respondent must take and pass a re-examination
23 consisting of a written as well as an oral examination. The
24 waiting period between repeat examinations shall be at three
25 month intervals until success is achieved. The Division shall
26 pay the cost of the first examination and respondent shall pay
27 the cost of any subsequent re-examinations.

1 If respondent fails the first examination, respondent
2 shall cease the practice of medicine until the re-examination has
3 been successfully passed, as evidenced by written notice to
4 respondent from the Division. Failure to pass the required
5 examination no later than 100 days prior to the termination date
6 of probation shall constitute a violation of probation.

7 (E) PSYCHIATRIC EVALUATION

8 Within 30 days of the effective date of this decision,
9 and on a periodic basis thereafter as may be required by the
10 Division or its designee, respondent shall undergo a psychiatric
11 evaluation (and psychological testing, if deemed necessary) by a
12 Division-appointed psychiatrist who shall furnish a psychiatric
13 report to the Division of its designee.

14 If respondent is required by the Division or its
15 designee to undergo psychiatric treatment, respondent shall
16 within 30 days of the requirement notice submit to the Division
17 for its prior approval the name and qualifications of a
18 psychiatrist of respondent's choice. Upon approval of the
19 treating psychiatrist, respondent shall undergo and continue
20 psychiatric treatment until further notice from the Division.
21 Respondent shall have the treating psychiatrist submit quarterly
22 status reports to the Division.

23 Even if respondent is not required to undergo
24 psychiatric treatment as a result of the psychiatric evaluation,
25 respondent must see a therapist and/or psychiatrist to discuss
26 the issues of communication with female patients prior to and
27 during breast and pelvic exams that respondent conducts, and for

1 respondent to receive sensitivity training to the needs of his
2 female patients. The therapist shall submit a report to the
3 Board indicating whether there has been compliance with this
4 condition.

5 GENERAL TERMS OF PROBATION

6 (F) OBEY ALL LAWS

7 Respondent shall obey all federal, state and local
8 laws, and all rules to the practice of medicine in California.

9 (G) QUARTERLY REPORTS

10 Respondent shall submit quarterly declarations under
11 penalty of perjury on forms provided by the Board stating whether
12 there has been compliance with all the conditions of probation.

13 (H) SURVEILLANCE PROGRAM

14 Respondent shall comply with the Board's probation
15 surveillance program.

16 (I) INTERVIEW WITH MEDICAL CONSULTANT

17 Respondent shall appear in person for interviews with
18 the Board or its designee upon request at various intervals and
19 with reasonable notice.

20 (J) TOLLING FOR OUT-OF STATE PRACTICE OR RESIDENCE

21 The period of probation shall not run during the time
22 respondent is residing or practicing outside the jurisdiction of
23 California. If, during probation, respondent moves out of the
24 jurisdiction of California to reside or practice elsewhere,
25 respondent is required to immediately notify the Division in
26 writing of the date of departure, and the date of return, if any.

27 (K) COMPLETION OF PROBATION

1 Upon successful completion of probation, respondent's
2 certificate will be fully restored.

3 (L) VIOLATION OF PROBATION

4 If respondent violates probation in any respect, the
5 Division, after giving respondent notice and the opportunity to
6 be heard, may revoke probation and carry out the disciplinary
7 order that was stayed. If an accusation or petition to revoke
8 probation is filed against respondent during probation, the
9 Division shall have continuing jurisdiction until the matter is
10 final, and the period of probation shall be extended until the
11 matter is final.

12 12. IT IS FURTHER STIPULATED AND AGREED that the terms
13 set forth herein shall be null and void, and in no way binding
14 upon the parties hereto, unless and until accepted by the Medical
15 Board of California of the State of California.

16 DATED: May 18, 1993

17 DANIEL E. LUNGREN Attorney General
18 of the State of California
19 JANA L. TUTON,
Supervising Deputy Attorney General

20 
21 MARA L. FAUST
22 Deputy Attorney General

23 Attorneys for Complainant

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1 I hereby certify that I have read this Stipulation and
2 Agreement in its entirety, that my attorney of record has fully
3 explained the legal significance and consequence thereof, that I
4 fully understand all of the same and in witness thereof I affix
5 my signature this 26th day of May, 1993
6 at Sacramento, California.

7 DATED: John Din, M.D.
8 JOHN DIN, M.D.
9 Respondent

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11 DATED: Robert J. Sullivan
12 ROBERT J. SULLIVAN, Esq.
13 Respondent for Respondent
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ORIGINAL

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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the
Accusation Against:

No. D-4973

ACCUSATION

JOHN DIN, M.D.
2720 Capitol Avenue, #302
Sacramento, CA 95816

Physician and Surgeon
Certificate No. A-18979

Respondent.

Complainant, Kenneth J. Wagstaff, alleges that:

1. He is the Executive Officer of the Medical Board of California, State of California (hereinafter referred to as the "Board"), and makes these charges and allegations in his official capacity and otherwise.

2. On or about November 20, 1969, respondent John Din, M.D. (hereinafter referred to as "respondent"), was issued Physician and Surgeon Certificate No. A-18979 by the Board. Said

1 certificate was in full force and effect at all times material
2 hereto and is currently renewed through December 31, 1992.

3 STATUTES

4 3. Business and Professions Code Section 2004^{1/}
5 provides that the Board has the responsibility for the
6 enforcement of disciplinary provisions of the Medical Practices
7 Act and for reviewing the quality of Medical practice carried out
8 by physician and surgeon certificate holders.

9 4. Section 2234 provides that the Division of Medical
10 Quality shall take action against any licensee who is charged
11 with unprofessional conduct. Unprofessional conduct is defined
12 therein to include but not to be limited to (a) Violating or
13 attempting to violate, directly or indirectly. . .any provision
14 of the Medical Practice Act; (b) gross negligence; (c) repeated
15 negligent acts; (d) incompetence; and (e) the commission of any
16 act involving dishonesty or corruption which is substantially
17 related to the qualifications, functions and duties of a
18 physician and surgeon.

19 5. Section 726 provides that the commission of any act
20 of sexual abuse, misconduct or relations with a patient which is
21 substantially related to the qualifications, functions or duties
22 of the occupation for which a license is issued constitutes
23 unprofessional conduct and grounds for disciplinary action for a
24 physician and surgeon.

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26
27 1. All statutory references are to the Business and
Professions Code unless otherwise indicated.

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1 mouth.

2 8. Respondent's actions of massaging patient D.S.'s
3 clitoris and kissing and hugging D.S., have exposed his license
4 to discipline for unprofessional conduct pursuant to Section
5 2234(b), and/or (d) and/or (e) in that such acts were grossly
6 negligent and/or incompetent, and/or corrupt (i.e. sexually
7 gratifying to respondent).

8 SECOND CAUSE FOR DISCIPLINARY ACTION

9 9. Respondent's actions as set forth in paragraph 7
10 have exposed his license to discipline for unprofessional conduct
11 pursuant to sections 726 and 2234 in that massaging patient
12 D.S.'s clitoris and kissing and hugging D.S., constitute acts of
13 sexual abuse, misconduct or relations with a patient.

14 PATIENT K.L.

15 THIRD CAUSE FOR DISCIPLINARY ACTION

16 10. On or about October 25, 1990, patient K.L. a 21
17 year old female, went to see respondent for a gynecological
18 examination. During the course of the pelvic examination,
19 respondent repeatedly massaged K.L.'s clitoris with his thumb in
20 a sexual fashion.

21 11. Respondent's actions of massaging patient K.L.'s
22 clitoris have exposed his license to discipline for
23 unprofessional conduct pursuant to Section 2234(b), and/or (d)
24 and/or (e) in that such acts were grossly negligent and/or
25 incompetent and/or corrupt (i.e. sexually gratifying to
26 respondent).

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1 FOURTH CAUSE FOR DISCIPLINARY ACTION

2 12. Respondent's actions as set forth in paragraphs 10
3 have exposed his license to discipline for unprofessional conduct
4 pursuant to Sections 726, and 2234 in that massaging patient
5 K.L.'s clitoris constitutes an act(s) of sexual abuse, misconduct
6 or relations with a patient.

7 PATIENT B.E.

8 FIFTH CAUSE FOR DISCIPLINARY ACTION

9 13. On or about August 27, 1991, patient B.E. a 17
10 year old patient, went to see respondent for a gynecological
11 examination. The patient removed all her clothing and put on a
12 hospital type gown that opens in the back. After the pelvic and
13 breast exam, respondent instructed B.E. to get off the
14 examination table, turn her back to respondent, and lift her arms
15 over her head. Respondent then placed his hands on the patient's
16 breasts while standing behind her. Respondent then fondled
17 B.E.'s breasts and pressed the front of his body up against the
18 patient's naked backside. Patient B.E. stepped away from
19 respondent.

20 14. Respondent's actions of fondling patient B.E.'s
21 breasts and pressing his body up against the patient's naked
22 backside have exposed his license to discipline for
23 unprofessional conduct pursuant to Section 2234(b), and/or (d),
24 and/or (e), in that such acts were grossly negligent and/or
25 incompetent and/or corrupt (i.e. sexually gratifying to
26 respondent).

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1 SIXTH CAUSE FOR DISCIPLINARY ACTION

2 15. Respondent's actions as set forth in paragraph 13
3 have exposed his license to discipline for unprofessional conduct
4 pursuant to Sections 726 and 2234 in that fondling patient B.E.'s
5 breasts and pressing up against her naked backside constitutes
6 acts of sexual abuse, misconduct or relations with a patient.

7 PATIENT G.M.

8 SEVENTH CAUSE FOR DISCIPLINARY ACTION

9 16. On or about November 4, 1976, respondent performed
10 a vaginal hysterectomy on patient G.M., a 38 year old female. On
11 or about November 30, 1976 and continuing on through at least
12 1979, respondent examined G.M. in several post operative and
13 other gynecological examinations. On approximately three
14 occasions, after respondent conducted the pelvic and breasts
15 examinations, respondent instructed G.M. to get off the
16 examination table and turn her back to him. On each of these
17 occasions patient G.M. was only wearing a hospital type gown that
18 was open in the back. On each of these occasions, respondent
19 placed his hands on G.M.'s breasts and rubbed his exposed penis
20 on her bare behind. On each occasion, patient G.M. moved away
21 from respondent, then turned and confronted respondent who then
22 apologized.

23 17. Respondent's actions of holding G.M.'s breasts and
24 pressing his exposed penis up against her naked backside from
25 1976 through 1979, have exposed his license to discipline for
26 unprofessional conduct pursuant to Section 2234(b) and/or (d),
27 and/or (e), in that such acts were grossly negligent and/or

1 incompetent and/or corrupt (i.e. sexually gratifying to
2 respondent).

3 EIGHTH CAUSE FOR DISCIPLINARY ACTION

4 18. Respondent's actions as set forth in paragraph 16,
5 have exposed his license to discipline for unprofessional conduct
6 pursuant to Sections 726 and 2234 in that holding patient G.M.'s
7 breasts and pressing his exposed penis up against her naked
8 backside from 1976 through 1979, constitutes acts of sexual
9 abuse, misconduct or relations with a patient.

10 PATIENT V.C.

11 NINTH CAUSE FOR DISCIPLINARY ACTION

12 19. On or about August 17, 1992, patient V.C., a 36
13 year old female, went to see respondent to get a second opinion
14 regarding vaginal discharge. During the breast examination
15 respondent's palm repeatedly rubbed against V.C.'s nipples.
16 During the pelvic examination respondent massaged V.C.'s
17 clitoris. This so upset patient V.C., that when respondent said
18 he was gong to do an anal examination, V.C. jumped up and off the
19 examination table and terminated the examination. Respondent's
20 actions of rubbing V.C.'s nipples, and massaging V.C.'s clitoris,
21 have exposed his license to discipline for unprofessional conduct
22 pursuant to Section 2234(b) and/or (d) and/or (e), in that such
23 acts were grossly negligent and/or incompetent, and/or corrupt
24 (i.e. sexually gratifying to respondent).

25 20. Respondent's actions as set forth in paragraph 19
26 have exposed his license to discipline for unprofessional conduct
27 pursuant to Sections 726, and 2234 in that fondling patient

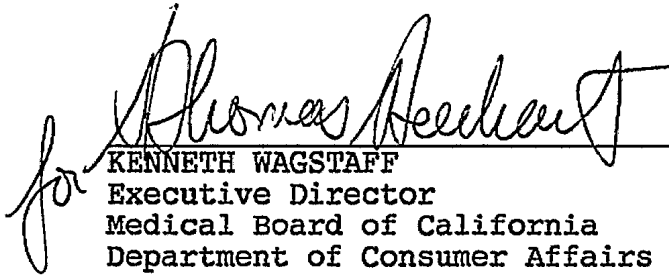
1 V.C.'s nipples and massaging her clitoris constitutes acts of
2 sexual abuse, misconduct, or relations with a patient.

3 ELEVENTH CAUSE FOR DISCIPLINARY ACTION

4 21. The allegations of paragraphs 7, 10, 13, 16, 19,
5 are hereby incorporated by reference. Respondent's actions in
6 the above referenced paragraphs have exposed his license to
7 discipline for unprofessional conduct pursuant to Section 2234(c)
8 in that such acts were repeated negligent acts.

9 WHEREFORE, petitioner requests that the Division of
10 Medical Quality schedule a hearing in this matter and thereafter
11 issue an order suspending or revoking Physician and Surgeon
12 license number A-18979 and taking such other actions as the Board
13 deems proper.

14 DATED: October 1, 1992.

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18 KENNETH WAGSTAFF
19 Executive Director
20 Medical Board of California
21 Department of Consumer Affairs
22 State of California

23 Complainant

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